THE
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DAN SMOOT

UNLAWFUL LAW OF THE LAND

In the *Brown vs. Board of Education* decision of May 17, 1954, the Warren Court abandoned the ancient principle that a court should follow its own legal precedents, in order to reverse an 1896 Supreme Court decision, and to rule that racially segregating public schools by law violates the Fourteenth Amendment — though admitting that the Fourteenth Amendment, when written and proclaimed adopted, had nothing to do with public schools.

The Warren Court based its *Brown* decision: (1) on opinions of psychological and sociological "experts"[2] presented by the NAACP — some of whom were officially connected with the NAACP, an interested party in the cases; and (2) on a "Social Science Statement," signed, but not sworn to, by 32 "social scientists," none of whom had any firsthand knowledge of the problems involved in the cases at bar,[1] some of whom were communist-fronters, others of whom were socialists (domestic and foreign).

Brown is of preeminent importance, not because it ended legal segregation in public schools, but because, in it, the Supreme Court illegally asserted itself to be *the* governing authority in the United States. The Court assumed illegal power to change, ignore, or abolish the Constitution, the laws of Congress, and the laws of individual states.

The *Brown* decision was immediately proclaimed the "law of the land" — although no court has authority to make law. Only Congress can make a "law of the land," and even that is not valid unless clearly authorized by some specific provision in the Constitution which is the supreme law of the land.

A court decision is applicable only to the parties specifically involved in the decision. The *Brown* decision involved only four school systems.

Nonetheless, there was insistent demand that all southern schools comply with the Supreme Court's new "law of the land." Most southern states resisted. Eisenhower used the Army to enforce the nonexistent "law of the land" at Little Rock in 1957. Five years later, Kennedy used military power to

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enforce the non-existent "law of the land" in Mississippi.

All of this prompted, and gave pretext for, Martin Luther King's "civil disobedience," which quickly escalated, by design, into the sporadic guerrilla warfare that has ravaged our cities and college campuses for the past five years.

In 1964 — ten years after the Warren Court's first school desegregation decision — Congress enacted a "law of the land" dealing with segregation in public schools.

The Civil Rights Act of 1964 is unconstitutional. The Constitution grants the federal government no power to intervene in educational matters; and the Tenth Amendment specifically reserves to the states, or to the people thereof, all powers not granted to the federal government. Nonetheless, the Act is a law of Congress. The proper recourse of the people is not to disobey the law, but to elect Members of Congress who will repeal it.

Since we are compelled to obey the illegal mandate of the Warren Court's *Brown* decision of 1954; and since our respect for orderly processes of government requires us to obey the illegal mandates of the Civil Rights Act of 1964 until it is repealed, it is important to know what those mandates are.

In *Brown*, the Warren Court remanded the four cases to federal district courts, instructing the lower courts "to enter such orders as are proper to admit to public schools on a racially non-discriminatory basis, with all deliberate speed, the parties to these cases."(1)

The clearest judicial interpretation of this mandate was made by a U.S. Circuit Court of Appeals, in *Briggs vs. Elliott*, on July 15, 1955. The Circuit Court of Appeals said:

"The Supreme Court . . . . has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. . . . If the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend."(1)

The intent of the Civil Rights Act of 1964, with regard to public schools, is also merely to order that they be operated on a racially non-discriminatory basis. Like the *Brown* decision of 1954, the Civil Rights Act of 1964 does not order *integration* of schools. It orders *desegregation*, which it defines as meaning "*the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin.*" The Act specifically says that "*desegregation shall not mean the assignment of students in order to overcome racial imbalance*"; and it declares that nothing in the Act "*shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another . . . in order to achieve such racial balance.*"

Southern schools complied with the Civil Rights Act of 1964 by adopting freedom-of-choice plans — eliminating racial considerations in school operations, allowing every student, of whatever race, uninhibited freedom to attend the public school of his choice.

At first, the Department of HEW and the federal courts approved the freedom-of-choice plans; but, as time went by, they perceived that parents and students in the south were not choosing to please judges and bureaucrats in Washington. Negroes were choosing to attend schools in their own neighborhoods, and so were whites.

In March, 1966, President Johnson's Department of HEW laid down guidelines establishing

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racial quotas for southern schools — requiring them, on pain of losing federal aid, to *force* Negro transfers to white schools, whether the Negroes liked it or not, *to achieve such racial balance* as specified by HEW.[3] This action is specifically prohibited by the Civil Rights Act of 1964.

Federal compliance teams, some of them using tactics described by one Congressman as brutal and inhuman,[4] roam the south, forcing school integration to comply with federal guidelines, in defiance of the preference of students and parents, and in violation of the law they claim to be enforcing. Federal courts have supported the illegal activities of HEW agents — with decisions holding that freedom of choice is not acceptable, unless students make the choices that Washington officialdom wants.[5]

Many school systems have been compelled to close schools in Negro neighborhoods and to bus the Negro students to schools in white neighborhoods. The inconvenience to Negro students; the overcrowding of schools they are forced to attend; the emotional disturbance and racial self-consciousness that such treatment creates; the economic waste of closing public schools to force Negroes to attend schools with whites; the additional cost to all taxpayers of providing busing services; switching emphasis from learning to racial integration — none of these considerations matters to the federal bureaucrats.

Nor does it matter to them that, under the pretext of enforcing the Civil Rights Act of 1964, they are violating it. They are also violating the Warren Court dictum, proclaimed in the *Brown* case of 1954, that *race must not be a consideration in the operation of public schools.* HEW now requires that *race must be the primary consideration in the operation of public schools.*

Early in 1969, the Warren Court joined the bureaucrats in violating the Court's own 1954 dictum and the 1964 law. The Court ruled that schools in one Alabama county must adopt a racial quota in hiring and assigning teachers.[6]

When campaigning for southern votes last year, Richard Nixon criticized President Johnson's HEW for using federal tax money to force illegal guidelines on schools. President Nixon's HEW secretary continues Johnson's guideline policies intact, and vows he will not change them.[7]

Johnson's HEW fixed September, 1969, as an absolute deadline for *all* schools to achieve total compliance with HEW's illegal racial-balance requirements, or lose federal aid. On July 3, 1969, Nixon's HEW and Justice Department announced that this deadline would be eased to give a few school systems (about 10 in all)[9] a little more time. The National Education Association led the legions of totalitarian liberals in denouncing the Nixon administration for yielding to southern pressure and scrapping HEW guidelines, which they called the "law of the land." Some of Nixon's "conservative" supporters in Congress applauded him for keeping his campaign pledge to relax harsh guidelines. But the clamor from both camps was false propaganda. Nixon officials specifically said they "want action by September, 1969," and made it quite clear that Johnson's HEW guidelines will not be altered even slightly.[9]

A typical situation has developed in Austin, Texas. Though it was not involved in the *Brown* decision of 1954, the Austin school system began, that year, to integrate. Now, 53% of its Negro students are in integrated schools. The remaining 47% of Negro students, exercising their freedom to choose, remain in all-Negro schools.

HEW ordered Austin to abandon freedom of choice, and to take steps that would force all Negro students to attend integrated schools. In mid-June, 1969, the Austin school board, under threat of losing federal aid, adopted a plan that would close three schools in Negro neighborhoods and bus the Negro students to schools in white neighborhoods. One of the schools to be closed was the newest and best school facility in the city; the other two were as good as any in white neighborhoods.

On June 23, 1969, 300 Austin citizens (from affected Negro and white neighborhoods) met with the school board and protested. They were angry about the inconvenience and turmoil the new plan would cause; about the closing of ex-

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pensive facilities and the consequent overcrowding of other facilities; about the additional expense of busing.

The Austin school board rescinded the new plan. Now, President Nixon's HEW says it will stop federal aid to Austin schools, unless the school board can discover some way to force total integration, against the wishes of Austin students and parents.

Informed observers in Austin predict that the next court test may be initiated by Negro parents to retain voluntary segregation.[8]

A case of that kind has already been filed in Nashville, Tennessee, by Jack Kershaw, an attorney representing 11,087 whites and 2413 Negroes in Maury County.

Kershaw has filed a Petition to Intervene in the case of *Florence Ella Hatton, et al, vs. County Board of Education of Maury County, Tennessee, et al*, which was originally initiated on a complaint by civil-rights activists purporting to represent not only the named plaintiffs *but all other Maury County Negro children (and parents)* in voluntarily segregated schools. A federal judge ordered the defendant (County Board of Education) to abandon freedom of choice and to adopt a plan that will bring about "meaningful integration" of all schools in the county.

The 13,500 parents and students (Negro and white) whom attorney Kershaw represents claim *their rights* have been ignored. They want to keep, and have freedom to use, their neighborhood schools.

Commenting upon his case, Mr. Kershaw points out that the forced integration ordered in Maury County is illegal and unconstitutional on several counts, and adds:

"Then besides all this, the facts of life are such that forced integration would damage both races.

"Since I represent some blacks along with some whites, and since a good many blacks for various reasons have decided they want their own schools or colleges or 'black studies program' etc., I believe we may be coming to a time when we can cry 'halt' with some chance of success."[1]

The original sin in all this is federal aid to education. Clearly illegal (unconstitutional), it was fobbed off on the public under the spurious cry of necessity, and with the false promise that it would not bring federal control or meddling.

Federal aid has produced harmful, lawless government-by-guidelines not only in education, but in other fields critically affecting the welfare and fundamental freedoms of the people.

FOOTNOTES

(1) Letter to this *Report* from Jack Kershaw, attorney, 400 Stahlman Bldg., Nashville, Tennessee 37201, together with copy of Petitioners' Brief prepared by Mr. Kershaw in *Florence Ella Hatton, et al, vs. County Board of Education of Maury County, Tennessee, et al*

(2) *The Role of the Social Sciences in Desegregation: A Symposium*, published by the Anti-Defamation League, 1958

(3) *U.S. News & World Report*, May 2, 1966, pp. 25-7

(4) "Browbeating Laid to U.S. Enforcers," *Dallas Morning News*, May 21, 1967, p. A8

(5) *Dallas Morning News*, June 28, 1969, p. A16

(6) *Time*, July 4, 1969, p. 63

(7) *Dallas Times Herald*, July 2, 1969, p. A24

(8) *Dallas Morning News*, June 23, 1969, editorial; June 28, 1969, p. A16; June 19, 1969, p. A25

(9) *Dallas Morning News*, July 4, 1969, pp. 1, A10; July 5, 1969, p. A18; July 9, 1969, p. D1

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